



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Numbers: 93.581, 93.587, 93.612]

Notice of Final Issuance on the Administration for Native Americans Program

Policies and Procedures

AGENCY: Administration for Native Americans, (ANA), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of Final Issuance.

SUMMARY: Pursuant to section 814 of the Native American Programs Act of 1974 (NAPA), as amended, ANA is required to provide members of the public an opportunity to comment on proposed changes in interpretive rules and general statements of policy and to give notice of the proposed changes no less than 30 days before such changes become effective. On February 19, 2021, ANA published a Notice of Public Comment (NOPC) in the *Federal Register* regarding its proposed interpretive rules and general statements of policy relative to its six FY 2021 Funding Opportunity Announcements (FOAs): Environmental Regulatory Enhancement (HHS-2021-ACF-ANA-NR-1907); Native American Language Preservation and Maintenance—Esther Martinez Immersion (HHS-2021-ACF-ANA-NB-1958); Native American Language Preservation and Maintenance (HHS-2021-ACF-ANA-NL-1924); Social and Economic Development Strategies (HHS-2021-ACF-ANA-NA-1906); Social and Economic Development Strategies—Alaska (HHS-2021-ACF-ANA-NK-1902); and Social and Economic Strategies—Growing Organizations (HHS-2021-ACF-ANA-NN-1918). This Notice of Issuance responds to the public comments received from the NOPC.

DATES: The FY 2021 FOAs have been published, and these FOAs serve as the final notice of ANA's proposed changes.

FOR FURTHER INFORMATION CONTACT: Carmelia Strickland, Director,
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SUPPLEMENTARY INFORMATION: Pursuant to section 814 of NAPA, as amended, ANA is required to provide members of the public an opportunity to comment on proposed changes in interpretive rules and general statements of policy and to give notice of the proposed changes no less than 30 days before such changes become effective.

ANA published a NOPC (86 FR 10283) on February 19, 2021, with proposed policy and program clarifications, modifications, and activities for the FY 2021 FOAs. The NOPC provided proposed clarifications, modifications, and new text for six FY 2021 FOAs.

During the 30-day comment period, ANA received three responses to the NOPC.

ANA reviewed the comments and determined them non-substantive and therefore would not require changes to the FOAs.

The following are the public comments received in response to the NOPC and ANA's responses:

Comment: My comment is that I hope to have ANA implement a requirement that all data collected in Indian Country by non-Indigenous and Indigenous entities are collected in a manner that ensures the tribe and community will have ownership, guardianship, and access to that data.

Response: ANA highly encourages tribes to be aware of their rights to intellectual property rights and data sovereignty. In the past, ANA has provided trainings at grantee meetings and webinars through ANA's training and technical assistance centers. In addition, ANA included a statement in all FY 2021 FOAs that encouraged applicants to educate themselves on intellectual property rights and the protection of ownership of

Native language materials, ceremonies, music and dance, and other forms of knowledge and cultural practices that originate from Native communities. However, due to the variety of laws, rights, and jurisdictions of these matters, ANA leaves this up to the discretion of grantees and applicants.

Comment: We urge ANA to discontinue the use of “normalized scoring.” While the intent of this practice is to normalize scoring across all review panels, it has had a negative impact on applications that obtain high scores in their review panels, but end up with a much lower scaled score, unjustly knocking them out of the competitive range for a funding award.

Response: ANA may use the statistical technique of “normalization” to convert raw scores from review panels to a standardized scale to negate any differences or biases in scoring behaviors among different panels and numerous reviewers. The decision to normalize scores occurs in advance of the panel session so as not to prejudice any specific competition and that all awards are made consistently across the different funding competitions when there are three or more panels. ANA has left the option for using normalized scores in the FY 2021 FOAs but will keep this comment in mind for planning the FY 2022 competitions.

Comment: We would like clarification about whether training and technical assistance information will still be available and accessible on the websites of the regional training and technical assistance providers, and that applicants who do not provide a letter of intent will be able to access such services.

Response: ANA provides technical assistance throughout all stages of the application process, regardless of providing a letter of intent.

Comment: Project-specific funding does not clearly define “essentially identical or similar in whole or in part.” It is not clear if the development of resources, like textbooks, would count as “essentially identical or similar” projects if they build on previous work and use similar project designs.

Response: ANA has a long-standing policy that it will not fund projects that are essentially identical or similar in whole or in part to previously funded projects proposed by the same applicant. While an applicant can have previously developed materials, the new project cannot duplicate the same materials and must address different subjects, populations, etc. If an applicant has concerns about whether ANA has funded them in the past for a project “essentially identical or similar in whole or in part,” ANA encourages them to reach out to ANA or an ANA technical assistance center for clarification.

Comment: ANA is requiring applicants to the Esther Martinez Immersion (EMI) language FOA to submit “an official document that certifies the applicant has at least 3 years of experience in operating and administering” an immersion school or language nest as required by the statute. As it stands, there are very few immersion schools and language nests in the United States where applicants could gain experience. We propose that this be modified to provide a training alternative for applicants without access to existing immersion programs. We recommend that ANA provide examples of certifications that will be accepted.

Response: The requirement of a certification by the applicant having not less than 3 years of experience in operating and administering a Native American language survival school or a Native American language nest is in the authorizing legislation of the Native American Programs Act for the EMI. ANA only clarified in the FOA that this was a requirement. In the EMI FOA, it states that the application should include an official document signed by the authorized representative that certifies that the applicant has at

least 3 years of experience operating and administering a Native American language nest, Native American language survival school, or any other education program in which instruction is conducted in a Native American language in accordance with Public Law 109-394 (42 U.S.C. 2991b-3(c)(7)). ANA's training and technical assistance centers are available to help applicants meet the requirements of the EMI FOA.

Comment: We would like to commend ANA for the proposed changes to the FY 2021 FOAs. We appreciate the revision resulting from the Indian Community Economic Enhancement Act (ICEEA) of 2020, which added Native community development financial institutions (CDFIs) as eligible entities. Similarly, we strongly support the new economic development legislative priorities that will be incorporated into the program areas of interest for the SEDS FOA. We encourage ANA to make it clear that these economic development priority points are available for applications from existing Native CDFIs that proposed economic development projects as well as from eligible applicants who propose to develop new Native CDFIs. In addition, we applaud the proposed efforts to reduce the redundancy and the number of scoring criteria in the FY 2021 FOAs.

Response: Thank you for your comment. The new ICEEA law does allow for the development of existing Native CDFIs. Therefore, should a Native CDFI submit an application that proposes a project for any of the following projects: 1) the development of a tribal code or courts system for purposes of economic development, including commercial codes, training for court personnel, (2) the development of non-profit subsidiaries or other tribal business structures; or "(3) the development of a tribal master plan for community and economic development and infrastructure" and the application includes the economic priority area(s) in the project goal, all objectives and indicators as reflected in the project's framework, project approach, OWP, and outcome tracker, they will be awarded points. ANA will instruct reviewers to provide all bonus points for

applications that propose an economic priority project that expands or creates a Native CDFI.

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